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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JUAN ALEXANDER VIANEZ,

11 Plaintiff,

12 v.

13 PIERCE COUNTY JAIL et al.,

14 Defendants.

CASE NO. C12-5272 RJB-JRC

ORDER TO FILE AN AMENDED
COMPLAINT

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16 The Court has reviewed the proposed complaint in this 42 U.S.C. §1983 civil action
17 (ECF No. 1, proposed complaint). The Court orders plaintiff to file an amended complaint
18 because the proposed complaint is deficient for a number of reasons as noted below.

19 Plaintiff is attempting to combine a Bivens action (Bivens v. Six Unknown Named
20 Agents, 403 U.S. 388 (1971)) against federal persons, possibly a civil rights action against state
21 defendants at Western State Hospital, and a civil rights action against a municipality -- Pierce
22 County -- in the same complaint. Plaintiff is also attempting to combine many incidents that
23 occurred over time into one action. The incidents are from different places. Some of those places
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1 are within this Court's jurisdiction, but some of the incidents occurred in other places, like
2 Tucson, Arizona, or Victorville, California.

3 A. Bivens actions.

4 A Bivens action can be brought against federal persons in place of a civil rights action.
5 Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). This action is allowed because
6 federal persons do not act under color of state law and they cannot normally be sued in a civil
7 rights action. Plaintiff may only seek monetary damages in a Bivens action, declaratory and
8 injunctive relief are not available. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971)
9 (allowing an action for damages).

10 Plaintiff needs to amend his complaint regarding incidents that allegedly occurred in the
11 Federal Detention Center at SeaTac, and to name proper defendants, specifically the persons who
12 he alleges deprived him of rights, and he will need to plead facts showing that he is entitled to
13 monetary relief.

14 B. Civil rights actions.

15 Plaintiff names Western State Hospital in the proposed complaint, but he provides no
16 facts regarding his alleged stay in the hospital (ECF No. 1). To state a claim under 42 U.S.C. §
17 1983, at least two elements must be met: (1) defendant must be a person acting under the color of
18 state law; and (2) defendant's conduct must have deprived plaintiff of rights, privileges or
19 immunities secured by the constitution or laws of the United States. Parratt v. Taylor, 451 U.S.
20 527, 535, 101 S. Ct. 1908 (1981) (overruled in part on other grounds); Daniels v. Williams, 474
21 U.S. 327, 330-31, 106 S. Ct. 662 (1986). Implicit in the second element, is a third element of
22 causation. See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 286-87, 97 S.
23 Ct. 568 (1977); Flores v. Pierce, 617 F.2d 1386, 1390-91 (9th Cir. 1980), cert. denied, 449 U.S.

1 875, 101 S. Ct. 218 (1980). State agencies, such as Western State Hospital, are not persons for
2 purposes of the Civil Rights Act. Will v. Michigan Department of Police, 491 U.S. 58, 66
3 (1989).

4 Plaintiff needs to amend his complaint regarding allegation of conduct at Western State
5 Hospital to name a person and to state a proper claim.

6 C. Municipal liability.

7 Plaintiff names the Pierce County Jail as a defendant. In order to state a claim against a
8 municipality, like Pierce County, a plaintiff must show that defendant's employees or agents
9 acted through an official custom, pattern or policy that permits deliberate indifference to, or
10 violates, plaintiff's civil rights; or that the entity ratified the unlawful conduct. See Monell v.
11 Department of Social Services, 436 U.S. 658, 690-91 (1978); Larez v. City of Los Angeles, 946
12 F.2d 630, 646-47 (9th Cir. 1991).

13 To establish municipal liability under § 1983, plaintiff must show (1) deprivation of a
14 constitutional right; (2) that the municipality has a policy; (3) the policy amounts to deliberate
15 indifference to plaintiff's constitutional rights; and (4) the policy is the moving force behind the
16 constitutional violation. See Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992).

17 The Supreme Court has emphasized that the unconstitutional acts of a government agent
18 standing alone, cannot lead to municipal liability; there is no *respondeat superior* liability under
19 § 1983. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 692 (1978). A
20 municipality may only be liable if its policies are the “moving force [behind] the constitutional
21 violation.” City of Canton v. Harris, 489 U.S. 378, 389 (1989), (*quoting Monell* at 694).

22 A municipality will not be liable for acts of negligence by employees of the jail or for an
23 unconstitutional act by a non policy-making employee. Davis v. City of Ellensburg, 869 F.2d
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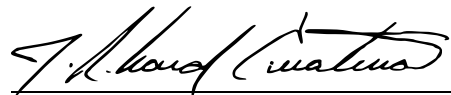
1 1230, 1234-35 (9th Cir. 1989). Evidence of mistakes by adequately trained personnel or the
2 occurrence of a single incident of unconstitutional action by a non-policy-making employee is
3 not sufficient to show the existence of an unconstitutional custom or policy. Thompson v. City
4 of Los Angeles, 885 F.2d 1439, 1444 (9th Cir. 1989). Plaintiff needs to amend his complaint if
5 he wishes to proceed against Pierce County. Plaintiff has not named the individual persons he
6 alleged acted improperly while he was housed in the Pierce County Jail.

7 D. Jurisdiction.

8 This Court has jurisdiction over incidents and persons in the Western District of
9 Washington. Plaintiff alleges that he is being improperly held in "SHU" in Tucson, Arizona.
10 This allegation is not properly before this Court. Plaintiff also names Oklahoma City FTC,
11 Dublin FCI, and Victorville USP, as defendants. None of these locations are within the Western
12 District. Further, plaintiff provides no facts regarding incidents at these other facilities.

13 The Court orders plaintiff to file an amended complaint curing the defects outlined above
14 by May 25, 2012. Plaintiff's failure to file an amended complaint, or the filing of a complaint
15 that does not cure the defects will result in a Report and Recommendation to dismiss this action.

16 Dated this 19th day of April, 2012.

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19 J. Richard Creatura
20 United States Magistrate Judge
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